

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1398 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
J

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

RAJUBHAI BHANABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1398 of 1993

MR KR RAVAL for Petitioner

MR. K.C.SHAH, LD.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 09/04/96

ORAL JUDGEMENT

Appellant Rajubhai Patel (Dhodia), the accused in
Sessions Case No. 64 of 1991 came to be convicted for the
commission of the offence punishable under Section 363,
366 and 376 I.P.Code, and has been sentenced to R.I. for
six months and fine of Rs.250-00, in default to the R.I.

for one month and to the R.I. for one year and fine of Rs.250-00, in default to the R.I. for three months and to the R.I. for seven years and fine of Rs.500-00, in default to the R.I. for one year respectively by learned Addl. Sessions Judge, Valsad, vide orders dated December 29, 1993. The said orders of conviction and sentence are in challenge in the present Appeal before me.

The case of the prosecution in brief is that, victim Pannaben, a girl below the age of 18 years had to appear at the examination which was being taken at TATA Highschool at Bilimora and that she was kidnapped from there while she was under the guardianship of her father. According to the case of the prosecution the appellant accused had abducted her and later on she was taken to various places where she was ravished against her will and without her consent. The police was informed and ultimately after 2 to 3 days the victim and the appellant accused came to be apprehended. Upon completion of the investigation appellant accused came to be chargesheeted. The charge came to be framed by learned Addl. Sessions Judge, Valsad at Navsari on 2nd September 1993 for the alleged commission of the above said offences. The appellant accused had pleaded not guilty to the charges levelled against him and has claimed to be tried by the Court. Upon the appreciation of the evidence on record, which hardly appears to be supporting the case of the prosecution, learned Trial Judge has come to the conclusion that the offences as alleged against the appellant accused are duly proved. This conclusion on the part of learned Addl. Sessions Judge has resulted in the orders of conviction and sentence, which are being challenged before me.

Learned counsel Mr. Kirit Rawal who appears for the appellant accused before me urges that the whole case of the prosecution stands belied by the evidence of the victim herself and her parents and that, no offence could be established against the appellant accused. Anyhow, learned Government Counsel Mr. K.C.Shah on the otherhand urges that the evidence on record was sufficient to warrant the conclusion rendered by the Court below and that there is no scope for any interference at this juncture. The Court below has disbelieved the say of the parents and the victim herself also regarding her age. The reliance was sought to be placed upon the extract from the Birth Register. But the evidence in this respect of the parents and the victim is abundantly clear. Dhanjibhai Patel, PW-1, Exhibit-6, the father of the victim has stated in an unequivocal manner that at the time of the incident victim Pannaben was aged about

18 to 19 years. During the cross-examination father of the victim says that within a period of two to three months Panna was got married and at that time she was aged about 19 to 20 years. Lilaben, PW-2, Exhibit-7 has stated in her evidence that, when Panna came to be married within a period of two months from the date of the incident she was aged about 19 to 20 years. Prakashbhai has also stated that when the marriage of Panna had taken place within a period of two to three months from the date of the incident she was aged about 19 to 20 years. Pannaben the victim PW-7, Exhibit-18 has stated that her age was 19 years on the date on which her evidence came to be recorded. But in the cross examination she has stated that within a period of two to three months her marriage had taken place and at that time she was aged about 19 to 20 years. This evidence therefore brought in by the prosecution would go to show very clearly that Panna should be aged about 18 to 19 years on the date on which the alleged offences were committed. The conclusion therefore rendered by the learned Trial Judge regarding the age of victim appears to be unsustainable.

Section 363 of I.P.Code does not come in the picture at all, regard being had to the age limit of 16 years provided under Section 361 I.P.Code. For establishing the offence it was incumbent upon the prosecution to show that Panna was below the said age. As indicated above, the evidence is just otherwise. Moreover it is abundantly clear that Panna had gone to the school for the purpose of examination in company of her brother Prakash. When Panna was in the class-room he had gone to collect the books and when he had come back it was found that Panna was missing and she was not in the school campus. The evidence of the victim Panna in this respect also is abundantly clear because according to her she had left the school campus in the company of the accused by autorikshaw and later on they had gone to various places and had stayed at the houses of the friends of the appellant accused. This cannot therefore said to be a case of taking as understood in law.

So far as Section 366 is concerned the reference shall have to be made to the definition given under Section 362 of I.P.Code. The prosecution was required to establish a forceful compulsion or deceitful means to be employed by the appellant accused to take victim Panna in his company. But the evidence as stated above would go to show that, there is absolutely no evidence regarding the deceitful means or the forceful compulsion. Panna herself had left the school campus in company of the

appellant accused who was known to her since last sometime because previously they used to reside at one and the same village. Moreover if it was a case of forceful compulsion, victim Panna had morethan one opportunities to make a complaint. In this respect her say very clearly is that she had stayed with the accused at various places and later on they came to be apprehended by the police. At all these period Panna has maintained a significant silence suggesting that she was a willing co-partner and she had left the school in company of a boy-friend who was known to her since last sometime. There are number of letters with full of emotion, written by Panna to the appellant accused. But even if these letters are not referred, by saying that they are not duly exhibited, the evidence goes to show very clearly that Panna used to know the accused since last sometime and that when she had an opportunity of escape, under the guise of going to the school for the purpose of examination she had preferred to go away in company of the appellant accused by travelling by autorikshaw and ST buses. They had also lived together practically as husband and wife at various places without making any grievance whatsoever. Because of this position it cannot be said that the appellant accused was guilty of abducting her by forceful compulsion or deceitful means. The Trial Court therefore was at an apparent error in coming to the conclusion that the offence punishable under Section 366 I.P.Code was established.

So far as the offence punishable under Section 376 is concerned, it shall have to be appreciated that as indicated above, Panna was aged about 18 to 19 to 20 years at the relevant time and therefore she cannot be said to be a minor under law, whose consent for sexual interaction cannot be said to be a valid consent. If once this position is accepted the evidence tendered by Panna is absolutely clear. She has stated that they had left the school by autorikshaw and thereafter they had gone to one village where they had stayed for one night. Her say further is that it happened to be the house of the friend of the appellant accused. On the next day they had left the premises and had gone to some another village and had stayed at the house of one another friend of the appellant accused. There also they had stayed for one day and a night. On the third day they again go to some another village and put up at the house of the friend of the appellant accused. This conduct adopted by victim Panna would go to show that she was a consenting and willing party to all what had occurred after she had left the school premises. During the course of the trial

Panna wanted to say that she was put under a great threat and she was compelled for the sexual interaction. But she has admitted during the cross examination that she had never said anything to the police at the investigation stage in this respect. Therefore the absence of consent on her part appears to be a clear after thought.

Some of the prosecution witnesses have not supported the case and they are declared to be hostile to the case of the prosecution. But when the police evidence is referred it becomes clear that during the course of the investigation some of the witnesses have stated that the accused and the victim had gone to their houses and it was represented before them that they had entered into a valid marriage and that they are on a honeymoon. It is thus clear that at all the relevant time victim Panna was a consenting party. In view of this the prosecution has not been able to establish the offence punishable under Section 376 of I.P.Code.

The evidence as perused above would go to show that the Trial Court was at an error in coming to the conclusion that the offences punishable under Section 363, 366 and 376 were established against the accused. This being the position the present appeal requires to be allowed and the same is hereby accordingly allowed. The judgment of conviction and sentence rendered by the Court below is hereby quashed and set aside. The appellant accused is hereby acquitted of the offences punishable under Section 363, 366 and 376 I.P. Code. The accused is behind the bars and therefore he shall be set at liberty forthwith, if not required in any other criminal case or proceedings. Fine if any paid shall be refunded to the appellant accused.
